

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1445 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

B S DYE CHEM INDUSTRIES

Versus

GUJARAT STATE FINANCIAL CORPORATION

Appearance:

PARTY-IN-PERSON for Petitioner
MR RD DAVE for Respondent No. 1

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 02/08/2000

ORAL JUDGEMENT

Rule.

2. Service of rule is waived by Mr. R.D.Dave,
learned advocate for revision opponent.

3. Heard Mr. Bhupendra S. Patel Party-in-Person

appearing as revision petitioner and Mr. R.D.Dave, learned advocate for the revision opponent.

4. Revision petitioner has filed this Civil Revision Application u/s. 115 of the Civil Procedure Code 1908 challenging the correctness, legality and propriety of order dt. 16th June, 1999 below application Ex.70 in Regular Civil Suit No. 375 of 1993 passed by the learned Civil Judge (J.D.), Ankleshwar (who will be referred to hereinafter as the learned Judge of the trial court).

5. By that application Ex.70, the original plaintiff had prayed for a relief to permit him to amend the plaint by enhancing the suit valuation. That application came to be dismissed on the ground that principle of res judicata operates against plaintiff for Ex.70, as the learned Judge of the trial court has already dismissed earlier application Ex.61.

6. The learned Judge of the trial court has not considered application Ex.70 in its correct perspective in manner in which it ought to have been considered, considering the facts stated therein and the provisions with regard to Order 6 Rule 17 of the Civil Procedure Code, 1908 (in short C.P.C.).He has rejected said application Ex.70 mainly on technical ground which is not sustainable in law because earlier application Ex.61 was with regard to return of the plaint under O. 7 Rule 10 C.P.C.and although that earlier application Ex.61, it was titled under O. 7 Rule 10 of the C.P.C. the learned Judge of the trial court considered that application Ex.61, as if it was a transfer application presented to him. Thus it appears from the record that for both the applications, the learned Judge of the trial court has adopted a curious approach, to decide Ex.61, without reading the contents of application and tenor of prayer, contained therein.

7. Considering the facts and circumstances of the case and with the consent of both the parties, the order dt. 16th June, 1999 passed below application Ex.70 in Regular Civil Suit No. 375 of 1993 which is pending on the file of learned Civil Judge (J.D.), Ankleshwar is hereby set aside, with a permission to plaintiff to prefer a fresh application for amendment in the plaint with other reliefs including a relief for enhancing suit valuation.

8. The learned Judge of the trial Court is directed to decide application Ex.70 fresh and another application which may be filed by the plaintiff pursuant to this

order of this court in accordance with law, by giving full opportunity of being heard to both the parties. The defendants are permitted to file their written reply against the application which may be filed by the plaintiff pursuant to this order in the trial court.

9. The learned District Judge, Bharuch is directed to transfer Regular Civil Suit No. 375 of 1993 from the file of main Civil Judge (J.D.), Ankleshwar to the file of learned Joint Civil Judge (J.D.), Ankleshwar for deciding Ex.70 and fresh application which may be filed by plaintiff pursuant to this order and also trial of the suit in accordance with law.

With the above observations, and directions, the Civil Revision Application deserves to be allowed and it is accordingly allowed. Order dated 16th June, 1999 passed below Ex.70 in Regular Civil Suit No. 375 of 1993 is set aside. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

Direct service is permitted.

Date: 2/8/2000. (H.H.MEHTA, J.)

ccshah